

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1635 of 2000**

Nanhu alias Laxmikant Verma, s/o. Munnulal Verma, aged about 20 years, r/o. Karhul, Police Station Simga, District Raipur (CG)

---Appellant

Vs

State of Madhya Pradesh(Now State of CG), through Police Station Simga, Distt. Raipur (CG).

- Respondent.

For Appellant : Mrs. Renu Kochar, Advocate
For respondent/State : Mr. Arvind Duney, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****10-04-2018**

This appeal is preferred against the judgment of conviction and order of sentence dated 22-6-2000 passed by the 2nd Additional Sessions Judge, Baloda Bazar, Sessions Division Raipur (CG) in Session Trial No. 282 of 1997 wherein the trial Court has convicted the appellant under Section 307 of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.12,000/- with default stipulations for committing attempt to murder of one Dwarika Prasad on 4-3-1997 at about 6.00 p.m., at village Karhul.

2. In the present case, name of the victim is Dwarika Prasad. It is alleged that the appellant/accused inflicted knife injury on the back of the victim with force and the knife could not be removed by ordinary surgeon, thereafter, the matter was referred to Medical College at Raipur and then only the said knife could be removed. The date of incident is 4-3-1997 and the first information report was lodged on the same day naming the appellant as culprit.

3. Learned counsel for the appellant would submit that at the most it is a case of causing simple injury and the offence under Section 307 IPC is not made out. She would further submit that the incident took place on 4-3-1997 whereby twenty years of time has lapsed and the appellant has already served three years and eleven months jail sentence, therefore, ends of justice would be served if the appellant is sentenced to the period already undergone by him.

4. On the other hand, learned counsel for the State submits that judgment of the trial Court is strictly in accordance with law and the same is not liable to be interfered with invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the material available on record.

6. To substantiate the charge, prosecution has examined as many as 24 witnesses.

7. PW/2 Dwarika Prasad deposed that he was going towards pond to ease himself at about 7.00 pm., and when he reached near the boring pump, appellant/accused assaulted him on back by knife and the appellant tried to remove the knife from the body of the victim but could not do so. As per version of this witness first he was admitted to hospital at Simga and thereafter he was referred to hospital at Mekahara, Raipur. Version of this witness is supported by the version of Chillu (PW/1), Ram Kumar (PW/3), Shankar Prasad (PW/9), Kaushalya Bai (PW/11) and Heeralal (PW/12) who have seen the victim after the incident. Version of all these witnesses is supported by the medical evidence of Dr. N.P. Tamrakar who examined the victim on 4-3-1997 at Primary Health Centre, Simgla and noticed the following injuries.

- I) Stab wound over back at the level of the 7.4 between the two scapula. The instrument tried for removal but failed to remove the instrument, hence the case is referred to Medical College, Raipur for further treatment and opinion please.
- ii) The above injury caused within 12 hours duration. The nature of injury and healing time will be decided after detail examination .

He stated that he was not able to remove the knife from the body of the victim and referred the matter to Medical College, Raipur. Version of this witness is supported by Dr. K. Sudharshan. Dr. S. Pawan (PW/7) is the medical expert who removed the knife from the back of the victim.

8. To constitute an offence under Section 307 IPC, two ingredients of the offence must be present:

- (a) an intention of or knowledge relating to commission of murder; and
- (b) the doing of an act towards it.

The essential ingredients required to be proved in the case of an offence under S. 307, IPC are:

- (i) That the death of a human being was attempted;
- (ii) That such death was attempted to be caused by, or in consequence of the act of the accused;

(iii) That such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as; (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death,

the accused having no excuse for incurring the risk of causing such death or injury.

(iv) To justify conviction under this Section it is not essential that bodily injury capable of causing death should have been inflicted.

9. In the case in hand, the accused/appellant inflicted injury on the back of the victim by deadly weapon knife with such a force and ordinary medical expert could not remove the knife from the back of the victim and when the victim was referred to the medical college, Raipur, then only knife was removed. The appellant has done everything within his power to eliminate the victim, but the final result alludes that proper medical treatment was provided to the victim in time.

10. From the totality of the fact, it can be easily inferred that the appellant attempted to kill the victim Dwarika Prasad and mischief of the appellant falls for offence under Section 307 of the IPC for which the trial Court has convicted the appellant and the same is not liable to be interfered with. Conviction of the appellant for offence punishable under Section 307 of the IPC is hereby affirmed.

11. Heard on the point of sentence:

From the record, it appears that the appellant suffered jail sentence from 5-3-1997 to 5-4-1997 during trial of the

case and again suffered jail sentence after conviction from 22-6-2000 to 29-4-2004 i.e., three years and ten months. In all the accused/appellant suffered jail sentence 3 years and 11 months.

12. Considering all the facts and circumstances of the case, I am of the view that it would not be proper to send the appellant to jail again and ends of justice would be served if the appellant is sentenced to the period already undergone by him. Now, the appellant is sentenced to the period already undergone by him while maintaining conviction under Section 307 of the IPC. The fine amount shall remain intact.

13. Accordingly, the appeal is partly allowed to the extent indicated above.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju